S.B. CIVIL WRIT PETITION NO.279/2005

Kundan Lal Arora vs. Thakar Chemicals Ltd. and others.

Date : 17.1.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. Dron Kaushik, for the petitioner.

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Heard learned counsel for the petitioner and perused the impugned order dated 17.12.2004.

According to learned counsel for the petitioner, the trial court stayed the proceedings of the civil original suit no.143/2003 on the ground that certain documents are required to be summoned before the evidence of the plaintiff.

According to learned counsel for the petitioner, the Court cannot grant more than three adjournments to any party and in this case, the Court has stayed the proceedings when the evidence of the plaintiff is going on.

According to learned counsel for the petitioner, the plaintiff could have produced all relevant documents along with the plaint itself and if not, then before framing of the issues. The plaintiff failed to produce the original documents, therefore, the plaintiff has no right to summon the documents. It is also submitted that the document which is not in power and possession of the party only could have been

summoned.

I have considered the submissions and have perused the reasons given in the impugned order.

There is no dispute that the criminal proceedings were also initiated and the trial court found that the relevant documents have been sent to Forensic Science Laboratory for examination and they can be brought into Court by the process of the Court and not by the plaintiff himself. The trial court found that the documents are relevant and without those documents, the trial court cannot proceed to take evidence of the plaintiff.

In these circumstances, the contention of learned counsel for the petitioner that the trial court cannot adjourn the case more than thrice for evidence of the plaintiff is totally misplaced argument and has no relevance at all as the restriction imposed by the provisions of C.P.C. applies to the party and not to the Court and in a case when the Court finds that the Court cannot proceed to decide the suit for want of the documents which are relevant for the purpose of deciding the controversy between the parties, then the Court has ample power to pass appropriate orders including the stay of proceedings of the suit with order to summon the documents.

So far as the contention of learned counsel for the petitioner that the original documents should have been produced by the plaintiff along with the plaint is concerned, there is no material available on the record which shows that the documents were in power and possession of the plaintiff at the time of filing of the suit.

However, it will be relevant to mention here that admittedly the original documents, when the order was passed by the trial court, were not in power and possession of the plaintiff, therefore also, the trial court was right in summoning the documents as it is a case where the documents are not in power and possession of the plaintiff.

In view of the above, I do not find any illegality in the impugned order. Accordingly, this writ petition, having no merit, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya